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JENNIFER D. ADAMSON
SHELL OIL COMPANY
INTELLECTUAL PROPERTY SERVICES
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HOUSTON, TX 77252-2463

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OFFICE OF PETITIONS

In re Application of :
Leonid Isaakovich Rubinstein : DECISION ON PETITION
Application No. 10/694,312 : UNDER 37 CFR 1.78(a)(3)
Filed: October 27, 2003 :
Attorney Docket No. TH-1905(US) :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 13, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending

nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The instant petition appears to indicate that applicant wishes to claim priority to prior U.S. application number 09/850,943. However, the amendment, submitted December 13, 2004, only indicates a priority claim to prior U.S. Provisional Application No. 60/421,753.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment that correctly identifies the prior U.S. application in which applicant wishes to claim priority should be filed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any questions concerning this matter may be directed to petitions attorney Edward Tannouse at (571) 272-3228.

Frances Hicks
Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy